DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

CHRISTOPHER D. LIBERTELLI
DIRECT DIAL 202-776-2839
libertel@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

April 29, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Motion to Accept Late-Filed Reply Comments in CC Docket 97-90/CCB/CPD 97-12

Dear Mr. Caton:

Cox Communications, Inc. ("Cox") by its attorneys, hereby respectfully requests that this Commission grant the instant motion to accept its late-filed Reply Comments in the above-referenced proceeding.[1/]

Cox has been an active participant in the local competition proceeding as well as many other Commission dockets designed to develop pro-competitive interconnection policies. Through this participation, Cox has provided this Commission with useful economic analysis and its perspective as a facilities-based competitor. Similarly, in the attached Reply Comments, Cox sought to provide information so that the Commission can make the appropriate public interest determination concerning US West's proposed interconnection surcharge. Unfortunately, because of a clerical error the Reply Comments were omitted from a courier package delivered to the Secretary's office.[2/] To eliminate any prejudice, all parties to this proceeding have been served and a copy of the Reply Comments has been hand delivered to US West Communications, Inc. The Joint Petitioners, Electric Lightwave, Inc., McLEOD USA Telecommunications Services, Inc. and NEXTLINK Communications, L.L.C., have been served by overnight mail. Therefore, in the interests of a complete record and because the public interest would be served by granting this request, Cox respectfully requests that the Commission accept the attached Reply Comments and incorporate them into the public record.

1/ Reply Comments in this proceeding were due by April 28, 1997. *See Requests of US West Communications, Inc. for Interconnection Cost Adjustment Mechanisms*, Order, CC Docket No. 97-90, CCB/CPD No. 97-12 (released April 16, 1997).

2/ *See attached* Affidavit of Carolyn Hudgins.

If you have any questions with regard to this motion, please do not hesitate to contact the undersigned.

Respectfully submitted,

Christopher D. Libertelli
Counsel for Cox Communications, Inc.

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Request of US West Communications, Inc.	)	CC Docket 97-90
for Interconnection Cost Adjustment	)	CCB/CPD 97-12
Mechanisms	)	

AFFIDAVIT OF CAROLYN HUDGINS

1. My name is Carolyn Hudgins, I am a Legal Secretary at Dow, Lohnes & Albertson. My responsibilities include the preparation of legal correspondence and filing documents at the Federal Communications Commission.

2. On April 28, 1997, I was asked to prepare several documents for delivery to the Secretary's office of the Federal Communications Commission ("Commission"), including an original and four copies of the Reply Comments of Cox Communications, Inc. ("Cox") in the following docket: In the Matter of US West Communications, Inc. for Interconnection Cost Adjustment Mechanisms, CC Docket No. 97-90, CCB/CPD 97-12. Because of a clerical error, the original and four copies of Cox's Reply Comments were omitted from the courier package which was delivered to the Commission's Secretary's office. When I discovered this error, every attempt was made to re-deliver the Reply Comments. Unfortunately, the second attempt to deliver the Reply Comments arrived at the Commission's Secretary's office at 5:32 p.m. on April 28, 1997.

3. To eliminate any prejudice, all parties of record in this proceeding have been served and I have served, by hand delivery, a copy of Cox's Reply Comments to US West Communications, Inc. The Joint Petitioners, Electric Lightwave, Inc., McLEOD USA Telecommunications Services, Inc. and NEXTLINK Communications, L.L.C.have been served by overnight mail.

4. I have read the foregoing "Motion to Accept Late-Filed Comments" and I attest that the factual allegations contained therein and in this Affidavit are true and correct to the best of my knowledge and belief.

Executed this 29 th day of April, 1997.

Carolyn Hudgins

Carolyn Hudgins

Sworn before me this 29th day of April, 1997.

Deborah L. Gorham
Notary Public, District of Columbia
My Commission Expires October 31, 1998

Deborah L Gorham
Notary Public

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request of U S West Communications, Inc.	)	CC Docket 97-90
for Interconnection Cost Adjustment	)	CCB/CPD 97-12
Mechanisms	)	

REPLY COMMENTS

Cox Communications, Inc. ("Cox"), by its attorneys, hereby files its reply to U S West's Opposition to the Joint Petition for Declaratory Ruling and other comments filed in response to the Joint Petition.[1/]

I. U S West Fundamentally Mischaracterizes Its Obligations Under the 1996 Act

U S West has missed the point of why a federal statute was necessary to address the powerful incentives a monopolist such as U S West has to engage in strategic delay, create regulatory uncertainty and to generally raise economic and legal barriers to competitors' entry into local exchange markets. Congress recognized these monopolist instincts and the effectiveness of such behavior in forestalling competition if left unchecked. For these reasons, the 1996 Act removed legal barriers to competitive entry and created a framework for

---

1/ The Joint Petition was filed by Electric Lightwave, Inc., McLEOD USA Telecommunications Services, Inc. and NEXTLINK Communications, L.L.C. (hereafter the "Joint Petitioners"). U S West's Opposition was filed on March 3, 1997, but apparently due to recurring problems with the FCC's RIPS system, was unavailable for review prior to the April 3, 1997 comment date set by the FCC in its March 4, 1997 Public Notice on the Joint Petition. Cox is hereby responding to the U S West Opposition and other comments filed on the Joint Petition.

interconnection intended to eliminate uneconomic pricing for essential interconnection facilities and functions. Additionally, by creating new, reciprocal obligations for all local exchange carriers, Congress removed the ILECs' ability to argue that other LECs were mere "customers" of ILEC services rather than local co-carriers.

The FCC in the *Local Competition Order* also recognized the ILECs' natural disincentive to cooperate in dismantling their monopolies. In constraining the ILECs' ability to charge interconnectors excessive amounts and thereby hinder the development of competition, the FCC concluded that forward-looking costs plus a reasonable allocation of joint and common costs were fully compensatory and that only a monopolist would or could demand more.[2/]

U S West nonetheless asserts that the FCC's forward-looking cost methodology (Total Element Long Term Incremental Cost, or TELRIC) will not enable it to recover all of its costs associated with preparing for the advent of competition and interconnecting its networks with those of its competitors. U S West thus characterizes the Joint Petition as an attempt to "expropriate the private property of incumbent local exchange carriers" and a "fundamental demand for free service" by competitors.[3/]

2/ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185 (released August 8, 1996) ("*Local Competition Order*"); *partially stayed pending judicial review, Iowa Utilities Board v. FCC*, Case No. 96-3321 and consolidated cases (Oct. 15, 1996). As the Commission observed: "we are establishing pricing rules that should produce rates for monopoly elements and services that approximate what the incumbent LECs would be able to charge if there were a competitive market for such offerings. We believe that a forward-looking economic cost methodology enables incumbent LECs to recover a fair return on their investment, i.e., just and reasonable rates. The record does not compel a contrary conclusion." *Local Competition Order* at ¶ 738.

3/ U S West Opposition at 1-2.

As explained by Cox and many other commenters, however, it is plain from the language of the statute and the findings of the *Local Competition Order* that U S West *is* constrained in what it can assess competitor-interconnectors for the functions, services and network elements it provides.[4/] Indeed, the whole point of statutory direction on this issue was to remove from dispute any serious argument that ILECs could formulate and assess unsubstantiated, strategically motivated charges on their competitors or on their competitors' customers. Although U S West insists that the 1996 Act (and implicitly the *Local Competition Order*) has created an enormous "free rider" problem that must be addressed by adoption of an Interconnection Cost Adjustment Mechanism ("ICAM"), it has not made its case.

As Cox stated in its comments and as echoed by other commenters, it would be unreasonable to take U S West at its word that the undefined "start-up" costs it seeks to recover in the ICAM surcharge could not or would not be captured in a TELRIC cost study. U S West first has to prove there are real costs associated with network upgrades done *solely* to comply with its statutory interconnection obligations that remain unrecovered under TELRIC.[5/] These

---

4/ *See* Cox Comments at 4; Aliant Comments at 2; ACSI Comments at 3; CompTel Comments at 3-4; Worldcom Comments at 3-4.

5/ It is just as plausible that some portion of its alleged "start-up"costs relate to U S West's other businesses, including cable television, broadband and switch deployment to serve Internet traffic and investment in infrastructure it hopes to use in support of its interLATA interexchange businesses. Such gamesmanship is hardly unlikely. ILECs currently are attempting to avoid exogenous cost treatment for ILEC plant investments made as regulated investments that are later shifted to unregulated ILEC ventures. *See SBC Petition for Reconsideration* (Docket 96-150, filed February 20, 1997) at 10-14; *Ameritech Opposition* (Docket 96-150, filed April 2, 1997) at 6-7; *BellSouth Opposition* (Docket 96-150, filed April 2, 1997) at 6; *Bell Atlantic/NYNEX Opposition* (Docket 96-150, filed April 2, 1997) at 5. As Cox and others pointed out in the 1996 Act accounting safeguards proceeding, if plant that has been 100 percent regulated is later shared or even moved entirely to the nonregulated category, error

(continued...)

costs must not include extraneous expenses such as lost revenues experienced as a result of competition. Assuming that it can substantiate real, unrecovered costs, U S West ought then to propose a competitively neutral form for their recovery, which it has not done thus far. It is far more likely that U S West is attempting to mask general network and network upgrade investments, which must be recovered from U S West ratepayers, as costs recoverable from competitor-interconnectors.

U S West also quotes several passages of the *Local Competition Order* to support its view of its entitlement to an ICAM surcharge.[6/] Even a cursory review of these quotes demonstrates that they fail to corroborate Commission approval of any surcharge *on top of* TELRIC-based rates as a legal method of recovering interconnection costs from competitors. In each quote, the Commission reiterates a basic point, namely that competitors should pay the relevant economic costs of using whatever parts of the ILEC network they request and in fact use. These "costs" can only be understood to mean costs that may be properly assessed under one of the distinct cost standards contained in Section 252(d).[7/] How U S West can construe any

---

5/ (...continued)
has occurred in BOC forecasting (or the BOC has committed fraud in support of its cross-subsidy). *See Cox Consolidated Reply* at 9 (Dockets 96-149, 96-150, filed April 2, 1997); *see also AT&T Opposition* (Docket 96-150, filed April 2, 1997) at 3.

6/ U S West Opposition at 5.

7/ Whatever the outcome of this debate on the purchase of network elements, U S West has no basis to claim extraordinary compensation for its provision of reciprocal transport and termination. U S West has not demonstrated that carriers reciprocally exchanging local traffic have burdened its network in any way or caused U S West to incur additional unplanned investment. More importantly, and as the FCC recognized in its Reconsideration Order, Section 252(d)(2) and not (d)(1), is the cost standard for ILEC recovery for local switching and termination. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration,* 11 FCC Rcd 13042, 13044
(continued...)

portion of the *Local Competition Order* as "fully consistent" with its proposed ICAM surcharge is a mystery because the *Local Competition Order* repudiates exactly the type of unsubstantiated — and therefore potentially anticompetitive — surcharge that U S West is attempting to impose on its competitors.[8/]

U S West is a competitor with significant assets and revenues. Its recent earnings are apparently so large that it recently filed for a waiver of the FCC's Price Cap rules to permit it to elect the "no-sharing" 5.3% productivity factor (X-factor) option to relate back to January 1, 1997.[9/] Without a waiver, U S West by its own admission "may be subject to sharing for the first half of 1997 since U S West elected to use a 4.0 percent X-factor in its 1996 price cap tariff filing."[10/] U S West's reported earnings were 13.57%, which exceeded the FCC's 11.25% ceiling for the estimated cost of ILEC capital by 2.32%.[11/] U S West cannot claim that the effects of

---

7/ (...continued)
(released September 27, 1996). Because the interconnecting competitor is permitting U S West to terminate local calls on its network, each carrier is receives a benefit under this arrangement that is reflected in the legally distinct "additional cost" standard of Section 252(d)(2).

8/ U S West's apparent willful misconstruction of FCC competition orders is not limited to this issue. The FCC recently found no support in the 1996 Act or its rules for U S West arguments on state authority over LATA boundaries. In the Petition for Declaratory Ruling Regarding US West Petitions to consolidate LATAs in Minnesota and Arizona, Order NSD-L-96-6, released April 21, 1997, the FCC observed that "the plain language of the Second Report and Order repudiates U S West's argument that the Commission implicitly delegated LATA modification authority to the states." *Order* at ¶22.

9/ See FCC Public Notice: U S West files Petition for Waiver of Price Cap Rules, DA 97-677, CCB/CPD 97-20, released April 14, 1997.

10/ U S West Price Cap Petition at 2.

11/ *See* Washington Telecom Week, April 11, 1997 at 20. It is noteworthy that the FCC is concerned that the present 11.25% ceiling may be too generous and is considering a proceeding to prescribe a rate that would be more in keeping with market rates. *See Local*
(continued...)

implementing its statutory obligations under the 1996 Act have impaired it financially in the least.

Finally, U S West attempts to resurrect a constitutional argument that, because the government is forcing it to take actions it does not want to take, it must be compensated. Even if U S West could demonstrate a taking requiring compensation, which it cannot, the FCC already has considered and rejected its assertion.[12/]

II. The Commission Should Remove All Doubt as to the Propriety of Assessing "Extraordinary" Costs on Competitors.

Several state and ILEC commenters argue that the FCC is not the proper forum for resolution of the ICAM controversy and that the FCC cannot preempt under Section 253 until a state takes an action and there is an order to review.[13/] There is no legal or policy impediment to immediate FCC review.

The FCC, following the directions of a federal statute, determined that it should adopt a nationwide framework for interconnection pricing to promote local competition. Even if the

---

11/ (...continued)
Competition Order at ¶ 702.

12/ As the *Local Competition Order* observes:

> The just and reasonable rate standard of TELRIC plus a reasonable allocation of the joint and common costs of providing network elements that we are adopting attempts to replicate, with respect to bottleneck monopoly elements, the rates that would be charged in a competitive market, and, we believe, is entirely consistent with the just compensation standard. . . . For these reasons we conclude that, even if the 1996 Act's physical collocation and unbundled network facility requirements constitute a taking, a forward-looking economic cost methodology satisfies the Constitution's just compensation standard. *Order* at ¶740.

13/ State of California Comments at 7; GTE Comments at 12; Southwestern Bell/Pacific Bell Comments at 2-4; Bell Atlantic/NYNEX Comments at 2-3.

FCC is not upheld in the full scope of its pricing jurisdiction in the Eighth Circuit, its TELRIC methodology and conceptual framework have been extremely helpful and influential with state commissions grappling with the complex interrelated competition issues posed by the 1996 Act. To suggest the FCC is not an appropriate entity to review U S West's claims of undercompensation for interconnection ignores this important basic fact.

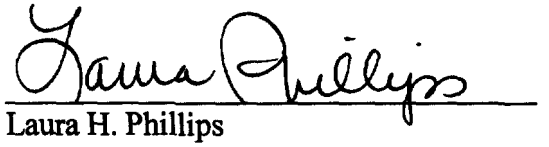
The argument that FCC review is premature prior to state action also overlooks the fact that the Joint Petitioners asked the FCC to address their petition as a request for declaratory ruling rather than as a request for preemption. The FCC's rules provide that it may, on its own motion or under a third party's motion, "issue a declaratory ruling terminating a controversy or removing uncertainty."[14/] It would waste the limited resources of competitors, state commissions and the FCC to await the outcome of a number of state actions before the FCC addresses the propriety of U S West's ICAM surcharge. Indeed, as the Joint Petitioners observe, failure to clarify U S West's rights and obligations will have a chilling effect on competitive market entry. Failure to act decisively also may encourage other ILECs to file similar requests with other state commissions. One is hard pressed to identify how the public interest would be advanced by the FCC not reviewing this issue now and providing the benefit of its insight to the U S West state

14/ *See* Declaratory Rulings, 47 C.F.R §1.2 (1996).

commissions. For these reasons, the FCC must remove the present uncertainty and provide guidance by expeditiously granting the Joint Petition by a declaratory ruling.

Respectfully submitted,

COX COMMUNICATIONS, INC.



Laura H. Phillips
Christopher D. Libertelli

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

April 28, 1997

CERTIFICATE OF SERVICE

Docket No. 97-90

This is to certify that I, Carolyn Hudgins, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, hereby certify that on this 28th day of April, 1997, a copy of the enclosed **Reply Comments** was sent via U.S. mail to the following parties of record:

Robert A. Mazer
Albert Shuldiner
Aliant Communications Co.
1455 Pennsylvania Avenue, N.W.
Washington, DC 20004-1008

Riley M. Murphy
Charles H.N. Kallenbach
James C. Falvey
American Communications Services, Inc.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Brad E. Mutschelknaus
Danny E. Adams
John J. Heitmann
American Communications Services, Inc.
1200 19th Street
Suite 500
Washington, DC 20036

Richard J. Metzger
Association for Local Telecommunications Services
1200 19th Street, N.W.
Suite 560
Washington, DC 20036

Lawrence W. Katz
Bell Atlantic Telephone Companies
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

William J. Balcerski
NYNEX Telephone Companies
1095 Avenue of the Americas
New York, NY 10036

Mary Mack Adu
People of the State of California and the
Public Utilities Commission of the State
of California
505 Van Ness Avenue
San Francisco, CA 94102-3298

Genevieve Morelli
Competitive Telecommunications
Association
1900 M Street, N.W., Suite 800
Washington, DC 20036

Robert J. Aamoth
Competitive Telecommunications
Association
1200 19th Street, N.W.
Suite 560
Washington, DC 20036

Cindy Z. Schonhaut
Julia Waysdorf
Government Affairs
ICG Telecom Group, Inc.
9605 East Maroon Circle
Englewood, CO 80112

Albert H. Kramer
Jacob S. Farber
ICG Telecom Group, Inc.
2101 L Street, N.W.
Washington, DC 20037-1526

Douglas G. Bonner
Mark Sievers
GST Telecom, Inc.
3000 K Street, N.W.
Suite 300
Washington, DC 20007

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

R. Michael Senkowski
Robert J. Butler
Suzanne Yelen
GTE Service Corporation
1776 K Street, N.W.
Washington, DC 20006

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Southwestern Bell Telephone Company
One Bell Center
Suite 3518
St. Louis, MO 63101

Marlin D. Ard
Randall E. Cape
John W. Bogy
Pacific Bell and Nevada Bell
140 New Montgomery Street
San Francisco, CA 94105

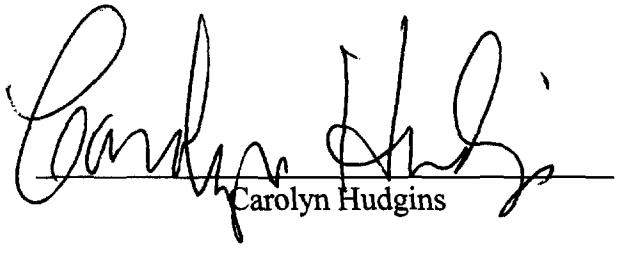
Margaret E. Garber
Pacific Bell and Nevada Bell
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004

Leon M. Kestenbaum
Jay C. Keithley
Norina T. Moy
Sprint Corporation
1850 M Street, N.W.
Suite 1100
Washington, DC 20036

Charles C. Hunter
Catherine M. Hannan
Telecommunications Resellers Association
1620 I Street, N.W.
Suite 701
Washington, DC 20006

Robert B. McKenna
US West, Inc.
1020 19th Street, N.W.
Washington, DC 20036

David N. Porter
Worldcom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC



Carolyn Hudgins